



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

December 23, 1948

Hon. Ted R. Alexander  
Bond Investment Adviser  
Board of Education  
Austin, Texas

Opinion No. V-755.

Re: Authority of State Board  
of Education to invest  
Permanent School Fund in  
Hospital Bonds issued by  
Board of Regents of The  
University of Texas.

Dear Sir:

We quote from your recent letter as follows:

"At the November 8, 1948 meeting of the State Board of Education, the Board of Regents of the University of Texas offered for sale to the State Board of Education \$1,000,000.00 3% Hospital Bonds proposed to be issued by the Board of Regents of the University of Texas pursuant to the constitution and laws of the State of Texas, and particularly the provisions of Chapter 5, Acts of the Second Called Session of the 43rd Legislature, as amended (Article 2603c VACS). These bonds are not to be and will not constitute an indebtedness of the State of Texas, but are special obligations to be issued by and in the name of the Board of Regents of the University of Texas, and will be payable both as to principal and interest, solely from a compulsory group hospitalization fee to be imposed on each student as a pre-requisite to registration in the Main University, not to exceed \$4.00 per student for any semester or for any one summer session, and from any other net revenues of the proposed hospital.

"The State Board of Education authorized the purchase of said bonds as an investment for the Permanent School Fund, subject to an opinion of the Attorney General that the Board has the authority to invest the State Permanent School Fund in bonds of this type.

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The State Board of Education, therefore, respectfully requests your opinion whether the proposed bonds herein above described are an authorized investment for the Permanent School Fund of Texas under the laws of this State."

Assuming the 3% Hospital Bonds under consideration will bear the approval of the Attorney General in accordance with Article 2670, V. C. S., we look to Article 2669, V. C. S., as amended, which authorizes the State Board of Education to invest the public free school funds in certain designated bonds.

Article 2669 provides:

"The State Board of Education is authorized and empowered to invest the permanent public free school funds of the State in bonds of the United States, the State of Texas, or any county thereof, and the independent or common school districts, road precincts, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and obligations and pledges of the University of Texas." (Emphasis added.)

This statute is the enabling law enacted pursuant to Section 4 of Article VII, Constitution of Texas, which reads in part:

". . . The Comptroller shall invest the proceeds of such sales and of those heretofore made as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State, or in such other securities and under such restrictions as may be prescribed by law . . . " (Emphasis added.)

The first such enabling statute appears in Acts 1905, page 263. It was later amended in Acts 1909, page 216. Each amendment including the last, Acts 1929, 41st Leg., page 573, Section 1, designated other bonds in which the Board of Education was authorized to invest the State permanent public free school fund. The bonds described in your letter could only come under a classification such as that added by the amendment of 1929, wherein the said Fund was permitted to be invested in

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"obligations and pledges of the University of Texas."  
A. G. Opinion No. O-3428.

These hospital bonds to be issued and sold by the Board of Regents of the University of Texas acting under authority of Articles 2589c and 2603c, V. C. S., are revenue bonds as distinguished from bonds voted by the people and supported by taxation. Article 2603c, Section 3, specifically provides that "any bonds . . . issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived from the operation of such buildings." Further, "the fees and charges (Section 2) thus fixed along with all other income therefrom shall be considered as revenue derived from the operation of the buildings thus constructed." Clearly, the bond issue thus created and sold would constitute a pledge of the University of Texas.

Further, Article 2589c specifically authorizes the Board of Regents of The University of Texas "to build, equip, operate, and maintain a hospital" under Article 2603c, and to levy and collect the fee not to exceed \$4.00 per student per semester.

It is pertinent to note that when Article 2669 was last amended in 1929, it was amended purposely to enable the Board of Education to invest the Public Free School Fund in obligations and pledges of The University of Texas involving the revenues in the Available University Fund. See emergency clause of S. B. 113, 41st Leg., page 575, Acts 1929. The University Available Fund consists of revenues of the University Permanent Fund. Article 2592, V. C. S.

The provision in Article 2669, as amended, authorizing the Board to invest the public school fund in "obligations and pledges of The University of Texas" is clear and unambiguous. Its intent is plain, not requiring the invocation of rules of statutory construction. This being true, expressions in the emergency clause cited may not be invoked for the purpose of raising an ambiguity in a statute, or to control its plain meaning or purpose. 39 Tex. Jur. page 228. Nor would the fact that Article 2603c was first enacted in 1934, subsequent to Article 2669 as amended in 1929, require, in our opinion, a holding contrary to that expressed herein. Article 2669 is a general law and nowhere therein does it limit its application to specific obli-

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gations and pledges. We need only to determine that the bonds under consideration constitute an obligation and the pledge of The University of Texas. We have so determined.


It is our opinion, therefore, that the State Board of Education is authorized under Article 2669, V. C. S., as amended, to invest the public free school fund of Texas in the hospital bonds to be issued and sold by the Board of Regents of The University of Texas acting under authority of Articles 2589c and 2603c, V. C. S., as amended, when same have been approved by the Attorney General.

SUMMARY

The State Board of Education has authorized under Article 2669, V. C. S., as amended, to invest the public free school fund of Texas in hospital bonds to be issued and sold by the Board of Regents of The University of Texas acting under authority of Articles 2589c and 2603c, V. C. S., as amended after the same have been lawfully authorized and have been approved by the Attorney General.

Yours very truly,


ATTORNEY GENERAL OF TEXAS

By 

Chester E. Ollison  
Assistant

CEO:wb:bh

APPROVED:

  
FIRST ASSISTANT  
ATTORNEY GENERAL